No. 83-2079

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In The
SUPREME COURT OF THE UNITED STATES

October Term, 1983

DON H. SLY,
~~UNIVERSAL CHURCH OF JESUS CHRIST~~,
~~and~~
~~BUREAU OF COLLECTIONS~~

v.

Federal Trade Commission
~~UNITED STATES OF AMERICA~~

Petition for a Writ of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit

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Ohatchee, Alabama 36271
205 / 443-5530

QUESTIONS PRESENTED FOR REVIEW

1. Can the provisions of 15 USC 1692, ("Fair Debt Collection Practices Act) , and Section a(5) thereof, pass constitutional muster as they define a "debt collector", if the District Court applies the definition to include as such a "person", non-profit, tax-exempt, corporate Christian Church, when the "principal purpose" of the Church is not "collection of debts", and when the minister-agent and a separate Bureau of the Church, is in fact conducting a debt mediation service, and when that Christian mediation service is not a party to the debt mediated, never takes assignment of the debt, and never sues or threatens suit to enforce the debt, but on the contrary, urges a Godly forgiveness of the debt by the creditor on many occasions?

2. Can 15 USC 1692, Section 1(a)[1] (FDCP Act, §814) be constitutional, as applied to grant jurisdiction for injunctive relief over the "person" of a Christian Church corporate body, her minister-agent, and a debt mediation Bureau,

> " ... irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act."? (From the statute.)

3. Can the United States District Court lawfully issue an injunctive order against a church and her minister-agent forbidding "attempts to mediate" ... "any debt" until a the court has "approved in writing a written plan..." and demanding within 180 days of recommencement, the furnishing of a list of all consumers to the Federal Trade

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[1] Section "ell" (a), following Section "k".

Commission?

Does such an injunctive order constitute official and continuing surveillance of the Church activities, forbidden by the First Amendment, as interpreted by this Court?

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UNIVERSAL CHURCH OF JESUS CHRIST,
and
BUREAU OF COLLECTIONS

v.

UNITED STATES OF AMERICA

Petition for a Writ of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit

Petitioner requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit, in this case.

REPORT OF OPINIONS BELOW

1. The per curiam Opinion of the Court of Appeals for the Eleventh Circuit, dated March 21, 1984, affirming the ORDER of the District Court, is unreported. A copy of the ORDER affirming is presented herewith as APPENDIX "A".

The case was styled FEDERAL TRADE COMMISSION versus DON H. SLY, UNIVERSAL CHURCH OF JESUS CHRIST, and BUREAU OF COLLECTIONS.

2. The United States District Court ORDER GRANTING SUMMARY JUDGMENT, dated Jan. 10, 1983, granting a permanent injunction against the Appellants herein from "debt mediation or collection", is presented as APPENDIX "B".

JURISDICTIONAL STATEMENT

1. The date of judgment in the Eleventh Circuit Court of Appeals was March 21, 1984. Ninety calendar days from March 21st would fall

on June 19th, 1984, as the statutory final date for RECEIPT of the Certiorari Petition by the Clerk of this Court to allow timely docketing to proceed.

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1), and Article III, Section 2, of the Constitution of the United States, as it involves constitutional questions arising out of the First Amendment to the Constitution, and federal questions of statute law.

CONSTITUTIONAL PROVISIONS AND STATUTES

CONSTITUTION OF THE UNITED STATES

Amendment One pertinently states:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press ..."

UNITED STATES CODE

Title 15, United States Code, Section 1692a (5) defines "debt collector" in pertinent part as follows:

> "The term "debt collector" means any person

> who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of debts ... or who regularly collects or attempts to collect ... debts ..."

Title 15, United States Code, Section 1692, §(l)[2], subpar. (a) states in pertinent part:

> "All of the ... powers ... to enforce compliance by any person with this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisidictional tests in the Federal Trade Commission Act ..."

STATEMENT OF THE CASE

1. The Appellants, and each of them, are permanently restrained by ORDER GRANTING SUMMARY JUDGMENT (APP:B, par.B) of the United States District Court for the Northern District of Alabama from any "attempts to mediate or collect any debt..." without subjection to the jurisdiction of the FTC "60 days prior to

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[2] Section "ell", following section "k". This is Section 814 of the FDCP Act, cited by the FTC as jurisdictional.

communicating with ... any consumer ... (all defendants) shall submit a written plan to plaintiff (FTC)..."

They are further subjected to official surveillance, and monitoring by the FTC, and and ordered to submit to reporting restraints by the ORDER (APP:B, par. C) which commands submission "within 180 days of recommencement of any such ("debt collection") activities a list of all consumers to the Federal Trade Commission.

2. The action leading to the permanent injunction[3] was first instituted by the Federal Trade Commission on March 19, 1981, based on broad and sweeping factual admissions during an "investigation" conducted by agents of the Commission both in Alabama,

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[3] By ORDER GRANTING SUMMARY JUDGMENT.

and at a later administrative "hearing" held later in Washington, D.C.

3. Shortly after the Court action commenced, pleadings in opposition to preliminary injunction, and Motion to Dismiss, especially on account of lack of jurisdiction by fact and law, were filed.

4. "Hearing" was held on the matter of preliminary injunction, after the Motion to Dismiss had been summarily denied at a prior time, without oral argument. At the "hearing", argument was had, with no witnesses called, and no evidence was taken. An ORDER GRANTING PRELIMINARY INJUNCTION immediately issued in writing on October 5, 1982, restraining and enjoining the Appellants, exactly in accordance with the demands of the FTC.

5. On April 1, 1983, the FTC moved the Court to hold the Appellants in

contempt as to both the INJUNCTION and a Discovery Order, and hearing was set for June 25th, 1983.

6. At the hearing the FTC lawyer was the only "witness" to testify on behalf of the "government". Appellant SLY took the stand to testify on behalf of himself, that he had not taken any knowing act in violation of the INJUNCTION, that he had suspended all operations of his own, and the Bureau of Collections on his own hook. He also testified that his position was contrary to the official position of the Universal Church of Jesus Christ, to the effect that they were not subject to the jurisdiction of the Federal Trade Commission by fact or law, and that they were not subject to restraint by the Court, since they were not taking any action forbidden by the Court.

No evidence was ever taken to show any action by any person other than DON SLY, and no nexus was ever established to show that the Church, as a juridical person, was a "business the **principal purpose of which** is the collection of debts ... or who regularly collects or attempts to collect debts ..."[1]

Any evidence to the contrary, notwithstanding, the Court found "all defendants" in contempt of the Court's PRELIMINARYINJUNCTION, all subject to unlimited power of the Court, and all, likewise, subject to be taxed costs and fees of $1522.00. The Court later added an additional $460.00 for the appearance of the FTC Counsel at a pre-trial conference.

7. ORDER GRANTING SUMMARY JUDGMENT

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[1] Quoted from 15 U.S.C. 1692(a) defining "debt collector".

(APP:B) issued January 10th, 1983, adopting the "findings of fact and conclusion of law dictated into the record at the conclusion of the preliminary injunction hearing held ... on October 1, 1981 ..." . In the most critical and pertinent part the ORDER (APP:B) "DECREED":

> "A. Defendants ... are hereby restrained and enjoined from engaging in any practices which violate the Fair Debt Collection Practices Act, 15 U.S.C. et seq., and are hereby restrained and enjoined from:
> "1. "Collecting, mediating, negotiating or soliciting or attempting to collect, mediate, negotiate or solicit ..."
> "B. Sixty days prior to recommencing collecting, mediating, or negotiating or attempting to collect, mediate, or negotiate any debt from any consumer and 60 days prior to communicating with ... any consumer ... defendants ... shall submit a written plan showing how defendants will collect, mediate or negotiate debts in a manner in compliance with this order and the Fair Debt Collection Practices Act. This plan shall be submitted to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. ..."
> "C. One hundred and eighty (180) days after recommencing the collection, mediation, or negotiations of debts ... defendants shall furnish plaintiff ... with a list of all consumers contacted during the 180 day

period ..."

8. The Appellants took the matter to the Eleventh Circuit Court of Appeals in timely fashion. The Court failed and refused to enter any Opinion, except a perfunctory PER CURIAM affirmation of the District Court's actions. (APP:A)

9. Appellants take this occasion to timely petition this Court for relief.

ARGUMENT

I.
APPLICATION OF 15 U.S.C. 1692 UNCONSTITUTIONAL

1. Can the provisions of 15 U.S.C. 1692, ("Fair Debt Collection Practices Act"), and Section a(5) thereof, pass constitutional muster, as they define a "debt collector", if the District Court applies the definition to include as such a "person", non-profit, tax-exempt, corporate Christian Church, when the "principal purpose" of the Church is not "collection of debts", and when the minister-agent and a separate Bureau of the Church, is in fact conducting a debt mediation service, and when that Christian mediation service is not a party to the debt mediated, never takes assignment of the debt, and never sues or threatens suit to enforce the debt,

but on the contrary, urges a Godly forgiveness of the debt by the creditor on many occasions?

The Court erred in applying the provisions of 15 U.S.C. 1692, and Section a(5), thereof, in finding the Universal Church of Jesus Christ was a "debt collector" within the meaning of the statute.

In the alternative, the statute is, and must be, unconstitutional for vagueness and violation of the First Amendment to the United States Constitution, in that it would go to allow the Universal Church of Jesus Christ to be classified as a "debt collector", when there was no evidence shown to the Court that the Church, which is a non-profit religious corporation incorporated under the laws of Alabama,[1],

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[1] 1940 CODE OF ALABAMA, Title 10.

and tax-exempt under the Internal Revenue Code of 1954[2]

The Defendant UNIVERSAL CHURCH OF JESUS CHRIST, attacked the statute:

> "The Defendants aver that under 15 U.S.C. Section 44, the provisions of the Federal Trade Act do not apply to the Defendant Universal Church of Jesus Christ ("Church"), as it is a nonprofit corporation, nor to the Defendant Bureau of Collections (Bureau) as it is a department of the church, nor to Defendant Don H. Sly, as he is an employee of the church."

The Defendant's ANSWER (R:194) to the Complaint then attacked head-on the applicability of the Act as a matter of fact:

> "The Defendant Bureau avers that it does not attempt, nor has it ever attempted, to collect, directly or indirectly, debts owed or due or asserted to be owed or due to others. The Bureau avers that it does attempt to mediate disputes between creditors and debtors."

The ANSWER averred that no provisions of the Act were relevant to

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[2] 26 U.S.C. 501(c)(3).

the case with the exception of 15 U.S.C. 1692 (a)(6)(E), which deals with non-profit organizations, which do credit counseling. The Church asserted that the nature and character of their effort was "mediation", not "debt collection". The Adversary appears to agree in the Plaintiff's COMPLAINT @ (R:4):

> "All the foregoing representations and implied representations are made to consumers even though the defendants never sue consumers, never recommend suit, are not in any way involved if the creditor ultimately sues the consumer."

The Plaintiff's position is a direct admission that the Defendant Church CANNOT BE A DEBT COLLECTOR, if the Church never invokes the process of the Courts to collect a debt. The very essence of debt collection (as the subject of the Act at bar) is COMPULSION. If the Plaintiffs admit the Defendants do not and cannot use compulsion, then they admit the Defendants are not and cannot

be "debt collectors" within the ambit of the statute, 15 U.S.C. 1692 a(5), whether the Courts below knew it or not.

The word of God says "be ye not unequally yoked with unbelievers". The FTC lawyers and the Federal District Court have attempted to unequally yoke A CHURCH WHICH NEVER SUES FOR DEBT, BECAUSE IT WOULD VIOLATE THE WILL OF GOD, with a common debt collector whose stock in trade[3] is the THREAT OF LAWSUIT WHICH MUST BE CARRIED OUT.[4]

The Act is intended to deal with "debt collectors", not Church mediation services.

In contrasting the true "mediation" function of the Church, as illustrated by the very documents (R:190,191,192,193)

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[3] Approved by the provisions of the Act.

[4] 15 U.S.C. 1692 (e)(5).

the Plaintiffs themselves entered into evidence, with commercialized "debt collection", first examine the "Universal Christian Mediation Council" letter, at (R:191), stating:

> "The Bureau of Collections is administered by the Universal Christian Mediation Council, as this gives us a chance to help many people. ... Many people are very much concerned with their obligations and if we can help them, we are following the example set by Christ.
>
> "Whether you owe this or not, whether you have already paid or plan to later, whether you have no intentions of paying or would like to if you could, regardless of the circumstance, we would like to challenge you to trust God."
>
> "... The best reading of course is from the Bible, where we are taught to treat others just as we would like to have them treat us. This is the key to life and the law of God, according to Christ as recorded in Matt. 7:12. There is no other way to have peace, but isn't it great to know there is at least one way to have it, and one way is enough.
>
> "How about giving it the actual test? Try it. Prove it. It's the simplest thing we could be asked to do, and it works. <u>Go to the one you have a problem with</u>. Your neighbor, creditor, wife, husband, parents, business associate or whoever it may be and open up to them just as you would like for

> them to open up to you. God will not only make a way for handling all disagreements, but will provide whatever is necessary for you to meet any agreements which are reached under his guidance. This is according to the instructions of Christ as recorded in Matt. 5:23-26." (Emphasis added.)

Appellant bluntly asked the Courts below. Is this an attempt at "mediation" between parties, in the interest of either (or both), or is it commercial or "secular"[5] activity?

More fully examining the "mediation" aspect of the Church, please see the form letter (R:192), written by the Universal Mediation Council:

> "As we informed you previously, we administer the Bureau of Collections program and attempt to help settle problems just as we are trying to do for you. This gives us the opportunity to repeat the offer of hope and peace, promised by Christ, to many who may otherwise never know about it. By the same token we must also repeat his admonishment to us if we fail to consider

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5 " ... the debt collection activities of the defendants are completely secular activities ... ", according to Judge Hancock. (T1:28-21).

our obligation to others because it is an equal part of his teachings and is just as true as his promises."

" ... Have we become so blinded that we believe teaching doctrines, philosophies, baptisms, avoidance of certain food, drink and drugs is Godly in nature, but meeting our obligations to our fellow man has nothing to do with religion?"

"If you would like to help us or to be helped, offer advice or criticism, express a feeling of oneness or the desire to be left alone, feel free to contact us."

Examine also the form letter (R:193), mailed by the Church to the debtor, setting out God's will, His Law, and His forgiveness; along with the computerized form letter (R:190), which suggests the following course of action FOR THE CREDITOR TO FORGIVE THE DEBT:

"Allow us to suggest something for this account which you may not have considered. Give it to charity and totally forgive this debtor. We wholeheartedly recommend it and believe your goodwill and profits will be greatly multiplied in return.

There follows a blank space for the creditor to check his approval for the following course of action:

"(_____) I recognize from the Lord's Prayer that our debts are forgiven us as we forgive others. I therefore authorize you to arrange for this account to be given to the charity of your choice and have them send me a receipt in the amount of this account as I need a record of the contribution for tax purposes."

In the light of these few facts from the record, does it seem reasonable, that the Church was not engaged in "mediation" or "counseling"[6], but was engaged in the dirty, dog-eat-dog, business of "debt collection", subject to the application of 15 U.S.C. 1692 a(5)? When the Church NEVER SUES TO ENFORCE COLLECTION, when the Church advises and counsels both debtor and creditor, based on the Word of the Living God, and even URGES THE CREDITOR TO FORGIVE THE DEBT?

WHAT KIND OF A "DEBT COLLECTOR" IS THAT?

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6 " ...the Court now finds ... do not constitute bona fide consumer credit counseling." (T1:27-20)

This Court can well understand from those few facts in the record, that there must be serious question that the Universal Church of Jesus Christ, is not and was not acting as a "debt collector" within the meaning of the statute.

The District Court therefore erred in finding that the Church was a "debt collector" within the meaning of the Act, 15 U.S.C. 1692 a(5).

ARGUMENT

II.

15 U.S.C. 1692 1(a) UNCONSTITUTIONALLY APPLIED

> 2. Can 15 U.S.C. 1692, Section 1(a)[7] (F.D.C.P. Act, §814) be constitutional, as applied to grant jurisdiction for injunctive relief over the "person" of a Christian Church corporate body, her minister-agent, and debt mediation Bureau, "... irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act."?

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[7] Section "ell"(a), following Section "k".

The Plaintiffs asserted jurisdiction in the COMPLAINT (R:1) under the section entitled THIS COURT'S POWER TO GRANT RELIEF (R:7) that according to Section 814 of the FDCP Act, all the functions and powers of the Commission are available:

> " ... irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act ... " (Emphasis added.)

Appellant urges that the specific provision invoked by the Plaintiffs themselves is and must be unconstitutional and void, for vagueness, and for repugnance to the First Amendment Religious protections, insofar as it can be applied to invoke Federal Authority over the Church, which is a non-profit, religious, tax-exempt organization.

Such a statute is especially offensive which applied to the Church, in

connnection and conjunction with Section a(5), previously argued, for like Section a(5), the "law" was used as a pretense to allow the Court to exercise "jurisdiction" without any showing by fact or law that the Universal Church of Jesus Christ, as juridical person,[8], WAS ACTUALLY SUBJECT TO THE COURT'S JURISDICTION. If the "law" is so broad THAT NO TEST OF JURISDICTION IS NECESSARY, then the "law" must be so broad as to be unconstitutional.

The Court may notice that the power of the United States Government under the Constitution consists of DELEGATED POWER, and that all other power not specifically delegated, is reserved to the States or to the People, according to Amendment Ten of the U.S. Constitution. The power of

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[8] Separate and apart from the other two Defendants, SLY, and the Bureau.

the people to gather together into churches is not subject to the exercise of power without any "jurisdictional tests".

The jurisdictional challenge was properly and timely raised, and pursued on appeal. The statute was either unconstitutionally applied, or it is The unconstitutional on its face. In either case, the ORDER of the District Court(APP:B) and PER CURIAM OPINION (APP:A) of the Appeals Court are unlawful, and due to be redressed.

III.

CONTINUING SURVEILLANCE UNCONSTITUTIONAL

> 3. Can the United States District Court lawfully issue an injunctive order against a church and her minister-agent forbidding "attempts to mediate ... any debt" until the court has "approved in writing a written plan ..." and demanding within 180 days of recommencement, the furnishing of a list of all consumers to the Federal Trade Commission?
>
> Does such an injunctive order constitute official and continuing

surveillance of the Church activities, forbidden by the First Admendment, as interpreted by this Court?

Appellants first attacked the matter of "excessive entanglement" by MOTION TO DISMISS (R:142), filed by the Universal Church of Jesus Christ and the Bureau of Collections[9], in part, to wit:

> "2. This Court lacks jurisdiction over the parties;
>
> "4. The complaint fails to state a claim upon which relief can be granted;
>
> "5. Any proceeding in this cause against these Defendants would be in violation of the First Amendment to the Constitution of the United States;
>
> "6. Any injunction issued in this cause requiring these Defendants to make or file with any Court or any Government agency any report, or reports, on their activities would be in violation of the First Amendment to the Constitution of the United States.
>
> "DEFENDANTS HEREBY REQUEST ORAL ARGUMENT."[10]

The Defendants also showed by Memorandum filed prior to issuance of the

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[9] Apart from Defendant SLY.
[10] Which was denied.

preliminary injunction:

"The Defendants do assert, however that su injunctive relief should not issue in this cause against the Universal Church of Jesus Christ or Bureau Collections ("Church") on the grounds that the end resu would be excessive government entanglement with religion.

"If a preliminary injunction were issued against t Church in this case, some means to determine whether not the injunction has been complied with or is bei continually complied with would be necessary. This cou be done by requiring the Church to report to the Court its activities from time to time as ordered by the Cour or the actual monitoring of the Church's activities by t Plaintiff, its agents or representatives. This wou require, however, an official and continuing surveillan of the Church's activities.

"This official and continuing surveillance of th Church's activities would constitute a degree o government entanglement with religion that is no permitted by the Religion Clauses of the First Amendmen to the Constitution of the United States. Walz v. Ta Commission of City of New York, 397 U.S. 664 (1970) United States v. Freedom Church, 613 F.2d 316 (CA1, 1979) Lemon v. Kurtzman, 403 U.S. 602 (1971); Surinach v Pesquera de Busquets, 604 F.2d 73 (CA1, 1979). Indeed th Court in the Freedom Church case, supra, stated, ".. where unconstitutional entanglement has been found, it ha been in the government's continuing monitoring o potential for regulating the religious activities unde scrutiny." (Emphasis added.)613 F.2d at 320. The Court i the Surinach case, supra, expressing its position on suc entanglement stated, "Such entanglement between th affairs of the church and state is 'an independant evi against which the Religion Clauses were intended t protect.' " 604 F.2d at 78. "

During the hearing on the preliminary injunction, the District

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Judge maintained that he had read the "material" (T1:3-10) and said:

> "I have serious concern about the propriety certainly as the case stands now, of giving anything more than a permanent injunction, ... leaving it to the Federal Trade Commission not for you to have to submit to them reports, but for them to police and look in, and if they find you in violation, to bring you back to court." (Emphasis added.)

This Court may may readily discern from an examination of the ORDER GRANTING SUMMARY JUDGMENT (APP:B), that the Universal Church of Jesus Christ has been permanently enjoined from any Christian mediation efforts (APP:B, par. A), where any monetary debt of any kind is or can be involved. Furthermore the Church is subjected to the continuing surveillance of the Federal Trade Commission and the Court for compliance, (APP:B, par. B) and is paralyzed from any mediation, except under oppressive conditions which demand PRIOR SUBMISSION TO THE COURT, AND

CONTINUING SURVEILLANCE BY THE COURT FOR AT LEAST 180 DAYS, IF AND WHEN THEY RESUME THEIR MEDIATION.(APP:B, par. C)

Is this an "official and continuing" surveillance of the Church activities, forbidden by the First Amendment?

Furthermore the Order of the Court, issuing against the Church, when it could have issued just as effectively against only the Bureau of Collections and against Don H. Sly amounts to excessive Governmental entanglement in Religion.

The District Court specifically found that:

> "With regard to the activities which are actually involved in this case, the actions and the conduct of any one or more of the several defendants are the actions and conduct of all defendants." (T1:27-1)

The Court has therefore denied the existence of the Universal Church of Jesus Christ as a separate juridical person, (APP:C), separate from Defendant

BUREAU OF COLLECTIONS (APP:D), and Defendant SLY, or entitled to any consideration under the First Amendment, as being immune from jurisdiction unless the facts showed THE CHURCH WAS A BUSINESS WITH A PRIMARY PURPOSE OF DEBT COLLECTION.

If the District Judge's finding were really valid, then it would not be necessary for him to enjoin the Church at all, because, if as the Judge pretended, "that Sly and the Church were one and the same", then injunction of Sly would be tantamount to injunction against the Church.

Such a finding does, in fact, fly in the face of the Record, because the same District Court had before it a written expression of the position of the Church, respecting the preliminary injunction issued against it, expressed in the

Church Minutes (R:472), differentiating the Church position from SLY'S position:

"October 15, 1981

" A special meeting was called to discuss the judge's order concerning the F.T.C. It was decided to ignore the judge's order as it conflicted with the belief and purpose of Universal Church of Jesus Christ."

Standing in contrast to that official position of the Church, flatly rejecting Court jurisdiction, we have the sworn testimony of Defendant Sly at the Contempt hearing of June 25, 1982, which shows that he took it upon himself to cease all activities in spite of the official Church position categorically rejecting Government jurisdiction. See (T2:99-2):

"Q Now you explained that by saying that the church felt it was not subject to the Court's order, but that you, on your own behalf, decided to cease the activities that had been going on, that the Court questioned, isn't that true?

"A Well, I was the director of the Bureau of Collections. I called a special

meeting, and I told them essentially what the Court had ordered. And it was determined that the Court did not have jurisdiction of the church ... Therefore the church felt it should go on record that the church was not being subjected to the Court when in fact we were subject to the Lord Jesus Christ and to Him only.

We see then that the Church and Don Sly ARE DIFFERENT PERSONS BECAUSE THEY TOOK DIFFERENT POSITIONS. The Court's finding was clearly erroneous.

It is apparent that "the actions and the conduct of any one or more of the several defendants" ARE NOT REALLY "the actions and the conduct of all the defendants" (T1:27-1). The actions and attitudes of the Church as a juridical person were entirely different than the actions and attitudes of Don H. Sly as a juridical person and as a Defendant. The Church rejected the Court's jurisdiction and Sly accepted it.

The evidence showed the Bureau of Collections was a part of the Church,(APP:D), but even if the activities of the Bureau were forbidden by the Act, which Appellants deny, it was the Bureau, itself, and not the Church, which was taking the actions complained of, and not the Church, which should have been subjected to restraint.

For the Court to overreach itself so far as to command the Church to cease all its mediation efforts (T2:112-15)[11], amounts to gross violation of First Amendment protections.

There was not a single item named in the COMPLIANT (R:1) or any

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[11] THE COURT: ... I am going to require that this outfit stop all communication with any debtor whatever ...

one of the Exhibits (R:14,15,16,17,18,19,21,22,) which could not have been effectively dealt with by injunction of the Bureau of Collections and Don H. Sly, entirely apart from the Universal Church of Jesus Christ itself.

Furthermore, the remaining Exhibits (R:191,192,193), mailed out by the Universal Christian Mediation Council of the Church, are not and cannot be subject to the jurisdiction of the Court, or the application of the Act.

YET THE CHURCH IS FORBIDDEN TO SPREAD THIS FORM OF GOSPEL TRUTH[12] UNDER PAINS AND PENALTIES OF LAW, according to the ORDER of the United States District Court.

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[12] To the honor and glory of the Lord Jesus Christ.

This Court is bound to reverse the action of the District Court, which has unlawfully attempted to exercise power and dominion over the Church of the Living God of Israel. In the alternative, the Court might declare that the First Amendment to the Constitution is stone-cold, dead at any time the Church stands accused of conducting a "secular" activity.

God will not be mocked, even by those disposed to those who sit in judgment of His People and proclaim of His Work (T2:114-6):

> "THE COURT: ... I don't understand his operation. It is about as secular as any operation I have ever heard. And it is pretty obviously calculated to be a shell game."

The Court had no authority to restrain the mediation work of the Living God or His Church, of which the Universal Church of Jesus Christ is a part.

The PER CURIAM (APP:A) and the ORDER OF THE COURT GRANTING SUMMARY JUDGMENT (APP:B) are due to be reversed.

CONCLUSION

The Crown of England declared in MAGNA CHARTA, June 15, 1215:

> "That the Church of England shall be free and enjoy all her rights in their integrity and her liberties untouched ... We will both keep ourself and it will be so kept by our heirs for ever."

We Americans are entitled to the full protections of the MAGNA CHARTA, as this Court is undoubtedly competent to notice, if the case of Thompson v Utah 170 u.s. 343 (1898) is to be believed, to the effect that MAGNA CHARTA is a part of our common law heritage.

On May 3, 1253, a "SENTENCE OF CURSE" was pronounced by the Bishops and ratified by the King, against all breakers of the MAGNA CHARTA:

> "In the year of our Lord 1253 ... We ... against the breakers of the churches

> liberties; and of the liberties and customs of this realm ... by the authority of Almighty God, the Father, the Son, and the Holy Ghost ... excommunicate and accurse ... all those who willingly and maliciously deprive or spoil the church of her right; and all those who by any craft, or willingness, do violate, break, diminish or change the churches liberties, ...; and all that secretly and openly, by deed word or counsel do make statutes or observe them being made, and that bring in customs to keep them, when they be brought in, against the said liberties, or any of them, and all those that shall presume to judge against them; and all and every such person before mentioned, that wittingly shall commit anything of the premises, let them well know that they incur the aforesaid Sentence ipso facto."

In Rector of Holy Trinity Church v United States, 143 U.S. 457 (1892) this Court stated as follows:

> "But beyond all these matters, no purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people. This is historically true. From the discovery of this continent to the present hour, there is a single voice making this affirmation ... These and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that this is a Christian nation.

The statements of law expressing the reality of MAGNA CHARTA, and the dictum

of this Court Holy Trinityand the conflicting applications of arbitrary law, and the actions of the FTC, allegedly "enforcing" 15 U.S.C. 1692, are so radically opposed as to allow nothin but death for the one and life for the other.

The Word of God demands "Choose ye this day which God ye will serve.

Let the Court declare the Federal Trade Commission is superior to the Church of a Sovereign God, or let them declare the truth of the matter, that there is no power, but ot God, and God will not be mocked.

PRAYER

Wherefore Petitioner moves this Court to issue the Writ of Certiorari, and prays the Living God will bring that to pass or reward the Adversary according to his works.

Respectfully submitted,

_____

DON H. SLY, Petitioner pro se
FOR PETITIONERS

Federal Building
Ohatchee, Alabama 36271

AFFIDAVIT OF SERVICE

I certify that this date I caused to be served three (3) copies of this PETITION FOR WRIT OF CERTIORARI was today had upon:

The Solicitor General of the United States
Department of Justice
Washington, D.C. 20530, and

Lawrence DeMille Wagman
Federal Trade Commission
Washington, D.C. 20530

All copies were served by mailing, postage prepaid, first class, Return Receipt requested, from Montgomery, Alabama.

Subscribed and affirmed before me this 15th day of June, 1984

_____
NOTARY PUBLIC
M Y C O M M I S S I O N E X P I R E S
.....

APPENDIX "A"

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

NO. 83-7152

FEDERAL TRADE COMMISSION,

Plaintiff-Appellee,

versus

DON H. SLY, UNIVERSAL CHURCH OF JESUS CHRIST, and BUREAU OF COLLECTIONS,

Defendants-Appellants

Appeal from the United States District Court for the Northern District of Alabama

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(March 21, 1984)

Before KRAVITCH and ANDERSON, Circuit Judges, and TUTTLE, Senior Circuit Judge

PER CURIAM: AFFIRMED. See Cir. R. 25

APPENDIX "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

FILED JAN 10 1983
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
JAMES E. VANDEGRIFT, CLERK

FEDERAL TRADE COMMISSION,
Plaintiff,
V.

DON H. SLY,
UNIVERSAL CHURCH OF JESUS CHRIST, and
BUREAU OF COLLECTIONS,
Defendants.

ENTERED JAN 10 1983

ORDER GRANTING SUMMARY JUDGMENT

Plaintiff, Federal Trade Commission ("Commission"), having filed a complaint for injunctive and other relief in this matter, and having moved for summary judgment pursuant to Rule 56 of the Federal Rules of Procedure, and the Court having considered the pleadings, affidavits, memoranda, and arguments of counsel, this Court is of the opinion that it has

jurisdiction of the subject matter herein and of the parties hereto. Further, this Court is of the opinion that there exists no genuine issue as to any material fact in this case and this Court adopts the findings of fact and conclusion of law dictated into the record at the conclusion of the preliminary injunction hearing held in this matter on October 1, 1981, and further finds the Plaintiff is entitled to judgment as a [page 2] matter of law. Accordingly, it is ORDERED, ADJUDGED and DECREED that:

A. Defendants Don H. Sly, Universal Church of Jesus Christ, and Bureau of Collections, and their officers, agents, servants, employees, and attorneys, and all persons acting on their behalf, as well as all persons in active concert or in participation with them who receive actual notice of this order, are hereby restrained and enjoined from engaging in any practices which violate the Fair Debt Collection Practices Act, 15 U.S.C. §§1692, et seq., and are hereby

restrained and enjoined from:

1. Collecting, mediating, negotiating or soliciting or attempting to collect, mediate, negotiate or solicit amounts from consumers in excess of the amounts expressly authorized by the agreements creating the debts or as otherwise permitted by law;

2. Using in connection with the collection, mediation or negotiation of debts from consumers any of the forms and envelopes attached to this Judgment as Attachments 1 - 6, our using any form or envelope substantially similar to those attached hereto;

3. Sending written communications or envelopes to consumers which contain a picture of the judge depicted on Attachments 1, 2, 4, and 5 hereto, or which contain any substantially similar picture;

4. Sending communications to consumers which threaten actions which cannot legally be taken or which are intended to be taken; [page 3]

5. Sending written communications to consumers

which simulate documents authorized, issued or approved by a court or which create a false impression as to their source, authorization or approval;

6. Sending written communications to consumers which contain false representations or use deceptive means to collect, mediate or negotiate, or to attempt to collect, mediate or negotiate debts;

7. Using a business name in written communications sent to consumers which is other than the one true name of defendants' business, company or organization;

8. Using language and symbols on envelopes sent by U.S. Mail to consumers which indicate that defendants are in the debt collection business;

9. Failing to mail consumers, within five days after the initial communication in connection with the collection, mediation or negotiation of any debt, a written notice containing the following four statements, verbatim:

a. "Unless you dispute this debt, or any part of it, within thirty days after receiving this notice, your debt will be assumed to be valid";

b. "If you notify us, in writing, within thirty days of receiving this notice that you dispute all, or any portion, of this debt, we will obtain verification of the debt and we will mail it to you";

c. "If, within thirty days of receiving this notice, you so request in writing, we will provide you with [page 3] the name and address of your original creditor if it is different from your current creditor"; and

d. "Federal law protects you from unfair debt collection practices. If you have any complaints about the way we are collecting this debt, contact the Division of Credit Practices, Federal Trade Commission, Washington, D.C. 20580."

B. Sixty days prior to recommencing collecting,

mediating, or negotiating or attempting to collect, mediate, or negotiate any debt from any consumer and 60 days prior to communicating with or contacting, directly or indirectly, any consumer, debtor, or creditor regarding a debt of any nature whatever, defendants Don H. Sly, Universal Church of Jesus Christ, and Bureau of Collections shall submit a written plan to plaintiff showing how defendants will collect, mediate or negotiate debts in a manner in compliance with this order and the Fair Debt Collection Practices Act. This plan shall be submitted to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 and shall include:

1) copies of all forms and envelopes to be used by defendants for collecting, mediating or negotiating debts or contacting consumers regarding debts;

2) the one name of defendants' business,

company or organization which they will use when collecting, mediating, or negotiating debts or contacting consumers regarding debts; and [page 5]

3) a full explanation of the modifications made to defendants' computer program so that consumers will not be dunned for amounts in excess of the amounts expressly authorized by the agreements creating the debts or as otherwise permitted by law and to otherwise effectuate compliance with the Fair Debt Collection Practices Act.

C. One hundred and eighty (180) days after recommencing the collection, mediation, or negotiations of debts in the manner set forth in Paragraphs A and B, defendants shall furnish plaintiff, at the address set forth in Paragraph B above, with a list of all consumers contacted during the 180-day period including the consumers' names and addresses, the name and address of the creditor who referred each debt,

the amount of each consumer's debt, and the amount collected from each consumer.

Costs are taxed against defendants.

DONE this 10th day of January, 1983.

s/ James H. Hancock
JAMES H. HANCOCK
UNITED STATES DISTRICT JUDGE

APPENDIX "C"

STATE OF ALABAMA

COUNTY OF ETOWAH

CERTIFICATE OF TRUSTEES FOR
INCORPORATION OF
UNIVERSAL CHURCH OF JESUS CHRIST

Now comes D. H. Sly, W. L. Reed and Juanita Reed, Trustees of Universal Church of Jesus Christ and represent and certify as follows:

1. The above named Trustees do state and certify that at a regular meeting of the congregation of the Universal Church of Jesus Christ, held at 7:00 p.m. on Friday, February 21, 1975, at the Universal Church of Jesus Christ Church and parsonage, located in Greenvalley Lake Estates, in Etowah County, Alabama, that a resolution was passed by a majority of the members of the congregation, signifying an intention to become inocrporated under the Laws of the State of Alabama, relating to incorporation of churches and religious societies as set forth in Title 10, of the Code of Alabama 1940 as amended.

2. Said Trustees do further certify and state that each of the undersigned were elected as Trustees of said Corporation for perpetual one year terms, and each of said Trustees should hold said office until their successors are duly elected and installed.

D. H. Sly 1975, W. L. Reed 1975, Juanita Reed 1975

e. Said Trustees do further state and certify that a resolution was duly adopted at the regular meeting of selecting the name "Universal Church of Jesus Christ: as the corporate name of said Church corporation.

4. Said Trustees do further state and certify that this Certificate of Incorporation is filed for the purpose of perfecting and completing the incorporation of said Church as provided by the general laws of the State of Alabama relating thereto and to enable such Church Corporation to acquire and hold title to real and personal property and to exercise all

such other rights, privileges, and powers as are incident of private corporation, except in the event of dissolution of said Corporation, in which case the residual assets of said Corporation will be turned [page 2] over to the Federal government, The United States of America, for exclusive public purpose, as described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1954 or corresponding sections of any prior or future Internal Revenue codes. Notwithstanding any other provision of the articles, this corporation shall not carry on any other activities not permitted to be carried on by (a) a corporation exempt from Federal income tax under section 501(c)(3) of the Internal Revenue code of 1954 or the corresponding provision of any future United States Internal Revenue Law or (b) a corporation contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1954 or any other corresponding provision of any future United

States Internal Revenue Law.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, on this the 1st day of May 1975.

s/ Juanita C. Reed (L.S.)

s/ W. L. Reed (L.S.)

s/ D. H. Sly (L.S.)

STATE OF ALABAMA

COUNTY OF ETOWAH

I, the undersigned, a Notary Public for the State of Alabama at Large, hereby certify that Juanita C. Reed; W. L. Reed & D. H. Sly, whose names as Trustees of the Universal Church of Jesus Christ are signed to the foregoing certificate, and who are known to me, acknowledged before me on this date, that, being informed of the contents of the certificate, they in their capacity as such Trustees, executed the same voluntarily, on the date the same bears date.

Given under my hand and notarial seal this the 1st day of May 1975.

Gail B. [illegible]
NOTARY PUBLIC, ALABAMA - STATE AT LARGE

APPENDIX "D"

Know all men by these presents, that the Universal Church of Jesus Christ, hereinafter to be known as "The Church", a non-profit corporation, has approved and hereby established a Bureau, to be known as the "Bureau of Collections" hereinafter referred to as "The Bureau". To mediate between debtors and creditors where delinquency, contested claims, misunderstandings, performance failures, or any other condition alienating one person from another may exist. This is done through the expectation that this is expected of us by instructions from our Lord, found in Matt. 5:23 through 26, and Matt. 18:15 through 34.

The Bureau shall use all available methods to seek out people with debt problems and help restore peace of mind by attempting to mediate differences presented to the Bureau with as much wisdom as God shall grant to promote moderation

and fair dealing as we are instruced [sic] in Philippians 4:5 through 9. The Bureau shall not limit itself to any land boundaries, nor fail to offer assistance in settling disagreements because of race, religion or creed.

The Church hereby makes known to all men by these present, that is [sic] has purchased for $1.00 and other valuable considerations, all of the assets, trade marks, service marks, contracts, and good will from the Bureau of Collections Inc., a Tennessee Corporation, and makes the entirety of this purchase available to the Bureau, for the purpose of mediateing [sic] differences through the principles taught to us by Jesus Christ in Matt. 7:12.

The Bureau shall be administered by The Church through a specially appointed director. The director shall serve on a perpetual basis and shall be removed either by resignation or by the

will of the Church.

The Bureau shall be subject to government control and regulations, but shall not be subjected to or influenced by philosophies of this or any church, elected government officials, or business groups. The Bureau may receive financial assistance from the body of The Church, but will attempt to be self supporting from dues, fees, service charges or donations specifically gathered for, by, or on behalf of the Bureau. [page 2]

In witness to the above we hereunto set our hands and seal the 1st day of September, 1976, D. H. Sly and W. Benny Moore.

Trustee -
Universal Church of Jesus Christ D. H. Sly

Secretary & Treasurer -
Bureau of Collections Inc. W.Benny Moore

FILED
JUL 26 1984
ALEXANDER L. STEVAS
CLERK

No. 83-2079

In the Supreme Court of the United States

OCTOBER TERM, 1984

DON H. SLY, ET AL., PETITIONERS

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

BEST AVAILABLE COPY

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In the Supreme Court of the United States

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DON H. SLY, ET AL., PETITIONERS

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

Petitioners challenge the entry of a permanent injunction against certain abusive debt collection practices, contending (1) that they are not "debt collectors" as defined in Section 803(6) of the Fair Debt Collection Practices Act, 15 U.S.C. 1692a(6);[1] (2) that there is no jurisdictional basis for the action; and (3) that enforcement of the injunction would involve the government in continuing surveillance of church activities in violation of the Establishment Clause. These arguments are without merit.

1. In the early 1970s, petitioner Sly owned and operated a Tennessee debt collection agency, the Bureau of Collections, Inc. (R. 552).[2] In 1974, Tennessee revoked his debt

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[1]Petitioners have incorrectly cited this Section as 15 U.S.C. 1692a(5).

[2]Citations to "R." refer to the district court record. Citations to "Tr." refer to the transcript of the hearing on motion for a preliminary injunction, October 1, 1981.

collection license. Sly then founded the Universal Church of Jesus Christ, Inc. (Church), which established an unincorporated Bureau of Collections, purportedly to "mediate" debts between consumers and creditors (Pet. App. D 6-8). Sly sold the assets of his old debt collection firm to the new Bureau (*id.* at 7).

The "mediation" activities of petitioners consist of soliciting overdue accounts from creditors (R. 119-120, 131-132) and sending delinquent consumers a series of letters urging payment (R. 221). Some of these letters were sent on the letterhead of Sly's old firm, the Bureau of Collections, Inc. (R. 14, 15, 17). The Bureau kept a portion of all money paid by consumers as its fee (R. 119-120). Petitioners engaged in numerous practices forbidden by the Act, including sending communications that threatened actions not intended to be taken, collecting unauthorized overcharges from consumers, and sending communications to consumers that falsely purported to be authorized by a court (Tr. 29).

The Commission brought an action in the United States District Court for the Northern District of Alabama to enjoin petitioners' illegal conduct. On October 2, 1981, the district court issued a preliminary injunction (R. 425-426). On June 25, 1982, after petitioners persisted in their unlawful activities, the court held petitioners in contempt (R. 506-510). Subsequently, on the merits, the district court granted the Commission's motion for summary judgment and issued a permanent injunction against petitioners (Pet. App. B 1-8). Petitioners appealed, and the court of appeals affirmed without opinion (Pet. App. A 1).

2. The district court concluded that petitioners are "debt collectors" as defined by the Act (Tr. 27).[3] It found that

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[3]The district court's factual findings, made during a hearing on the Commission's motion for a preliminary injunction, were incorporated by reference in the court's order granting summary judgment (Pet. App. B 2).

petitioners' debt collection activities were in "express violation of federal law designed to protect the public from fraudulent activities of debt collectors." It also concluded that these activities were "completely secular activities of the defendants," and were "not in furtherance of any religious activities of the defendant." Tr. 28. The district court based these findings on evidence that included numerous dunning letters sent by petitioners to consumers (Tr. 29-30), the post card used by petitioners to solicit the overdue accounts from creditors (R. 131-132), the leaflet explaining petitioners' fees (R. 119-120), examples of petitioners' stationery (R. 14, 15, 17), and the testimony of petitioner Sly.

Petitioners' argument that they were not engaged in debt collection activities within the meaning of the statute (Pet. 16-25) is based solely on quotations from some of their more benign dunning letters. The court of appeals rejected their argument without need for opinion. Further review by this Court of this purely factual question is not warranted.[4]

3. Petitioners also assert (Pet. 25-28) that there was no jurisdictional basis for this injunctive action. This appears to be based on a misunderstanding of Section 814(a) of the Act, 15 U.S.C. 1692*l*(a). That Section simply provides that the Commission's enforcement actions under the Act have an independent jurisdictional basis, and are not limited by the jurisdictional tests of the Federal Trade Commission Act, 15 U.S.C. 44 and 45. The jurisdictional basis for the Commission's enforcement of the Fair Debt Collection

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[4]Petitioners assert, without explanation or elaboration (Pet. 17), that if applied to their activities the Act would be unconstitutionally vague and in violation of the First Amendment. However, given the factual findings of the district court that their debt collection activities are purely secular and not in furtherance of their religion, petitioners' argument has no basis.

Practices Act is found in Section 803(6), 15 U.S.C. 1692a(6), which limits the definition of "debt collectors" to persons engaged in certain activities involving "any instrumentality of interstate commerce or the mails."

The fact that petitioner Church is incorporated as a religious organization does not affect the jurisdiction of the court or the Commission. The Constitution permits the courts to exercise jurisdiction over purported religious activity to determine whether conduct at issue is motivated by sincerely held religious beliefs and entitled to constitutional protection. *United States* v. *Ballard,* 322 U.S. 78 (1944). No more is involved here.

4. Petitioners also contend (Pet. 28-38) that the district court's injunction constitutes continuing surveillance of a church's religious activities, in violation of the Establishment Clause. See *Lemon* v. *Kurtzman,* 403 U.S. 602, 614 (1971); *Walz* v. *Tax Commission,* 397 U.S. 664 (1970). This contention raises no significant question of law, but merely the application of settled principles to the particular facts of this case. In any event, it was correctly rejected by the courts below.

The Establishment Clause does not create a "total separation" between religious organizations and the government, but is intended to "prevent, as far as possible, the intrusion of either into the precincts of the other." *Lemon* v. *Kurtzman,* 403 U.S. at 614. Here, as the district court found, the debt collection activities of petitioners are a purely secular activity, wholly unrelated to any religious belief of petitioners. It is no intrusion into protected activity for the government to regulate the purely secular (and in this case, unlawful) activities of purported churches. *United States* v. *Ballard, supra.*

Moreover, the district court's injunction was carefully tailored to minimize direct access by the Commission to the records of petitioner Church (see Tr. 33). The injunction simply requires petitioners to file a statement with the Commission before resuming debt collection activities, showing the manner in which they intend to proceed (Pet. App. B 5-8), and to file a subsequent report, 180 days after resuming collection activities, with information on the creditors and consumers with whom petitioners have done business (*id.* at 7-8). This will allow the Commission to determine whether petitioners are complying with the court's order without involving the Commission in direct surveillance of petitioners' activities.

There is no reason to restrict the reach of the injunction to petitioner Sly and the Bureau of Collections, as petitioners suggest (Pet. 32). Petitioner Church administered and controlled the Bureau of Collections, owned its assets, and voted to violate the district court's preliminary injunction (*id.* at 33-35). Because the Church itself has engaged in illegal secular debt collection abuses, there is no violation of equitable principles in applying the injunction to it.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

JULY 1984

DOJ-1984-07